DOCUMENT RESUME

ED 480 755 EC 309 803

AUTHOR	Markowitz, Joy; Ahearn, Eileen; Schrag, Judy
TITLE	Dispute Resolution: A Review of Systems in Selected States.
INSTITUTION	National Association of State Directors of Special Education, Alexandria, VA.
SPONS AGENCY	Special Education Programs (ED/OSERS), Washington, DC.
PUB DATE	2003-06-00
NOTE	30p.; Prepared by Project FORUM at NASDSE.
CONTRACT	H326F000001
AVAILABLE FROM	National Association of State Directors of Special Education, 1800 Diagonal Rd., Suite 320, Alexandria, VA 22314. Tel: 703-519-3800; Fax: 703-519-3808. For full text: http://www.nasdse.org/ forum.htm.
PUB TYPE	Reports - Research (143)
EDRS PRICE	EDRS Price MF01/PC02 Plus Postage.
DESCRIPTORS	*Conflict Resolution; Database Management Systems; *Disabilities; *Due Process; Elementary Secondary Education; Family School Relationship; Hearings; *Parent Grievances; Problem Solving; Program Design; Special Education; *State Programs; Training Methods
IDENTIFIERS	Alabama; Arizona; California; Illinois; Iowa; Maine; Massachusetts; *Mediation; Mediation Techniques; Mediators; Minnesota; Montana; Virginia; Washington; Wyoming

ABSTRACT

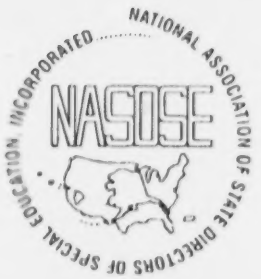
This report discusses findings of a study that investigated the resolution of disputes in the field of special education. Information was collected from ten states (Alabama, California, Illinois, Iowa, Maine, Massachusetts, Minnesota, Virginia, Washington, and Wyoming) on their current dispute resolution systems and from two additional states (Arizona and Montana) on other procedures they have put in place that are known as early dispute resolution options. Findings in the areas of complaints, mediation, and due process indicate: (1) state education agencies directly administer state complaint procedures and usually begin by opening a file and contacting the special education administrator and the superintendent at the local education agency; (2) the ten states involved in the study vary considerably in the length of time they have provided mediation, do not have a strict set of prerequisites for mediator applicants, and only 8 of the 10 states make mediation services available anytime parties have a dispute; and (3) states use either a single-level or two-level structure system for due process hearings. The study also found that the main dispute resolution components (complaints, mediation, and due process) typically do not function as an integrated system. The need for an integrated data system is stressed. (CR)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 480 755

Dispute Resolution:

A Review of Systems in Selected States



June 2003

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
This document has been reproduced as received from the person or organization originating it.
Minor changes have been made to improve reproduction quality.
Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

by

Joy Markowitz
Eileen Ahearn
Judy Schrag

Project FORUM
National Association of State Directors of Special Education
1800 Diagonal Road, Suite 320
Alexandria, VA 22314
703-519-3800
www.nasdse.org

EC 309803

BEST COPY AVAILABLE

Dispute Resolution:
A Review of Systems in Selected States

by

Joy Markowitz, Eileen Ahearn and Judy Schrag*

June 2003

Prepared for:

Project FORUM
National Association of State Directors of Special Education (NASDSE)
1800 Diagonal Road - Suite 320
Alexandria, VA 22314

Year 1 Deliverable 1-3C
Under Cooperative Agreement # H326F000001
Office of Special Education Programs (OSEP)
U.S. Department of Education

* *Judy Schrag of the Education and Human Systems Group, Port Orchard, WA worked with Project FORUM as a consultant on this document.*

Project FORUM at National Association of State Directors of Special Education (NASDSE) is a cooperative agreement funded by the Office of Special Education Programs of the U.S. Department of Education. The project carries out a variety of activities that provide information needed for program improvement, and promote the utilization of research data and other information for improving outcomes for students with disabilities. The project also provides technical assistance and information on emerging issues, and convenes small work groups to gather expert input, obtain feedback and develop conceptual frameworks related to critical topics in special education.

This report was supported by the U.S. Department of Education (Cooperative Agreement No. H326F000001). However, the opinions expressed herein do not necessarily reflect the position of the U.S. Department of Education, and no official endorsement by the Department should be inferred.

Note: There are no copyright restrictions on this document, however, please credit the source and support of federal funds when copying all or part of this material

U.S. Office of Special Education Programs

This document, along with many other FORUM publications, can be downloaded from the Project FORUM at NASDSE web address:
http://www.nasdse.org/forum.htm

To order a hard copy of this document or any other FORUM publications, please contact Carla Burgman at NASDSE, 1800 Diagonal Road, Suite 320, Alexandria, VA 22314
Ph: 703-519-3800 ext. 312 or Email: carla@nasdse.org

BEST COPY AVAILABLE

Acknowledgements

Project FORUM extends its sincere appreciation to the individuals listed below who were interviewed for this document and/or reviewed an earlier draft. Their time and expertise enriched the quality and accuracy of the information. Acknowledgement of these individuals does not necessarily indicate their endorsement of this final document.

State Departments of Education:

Alabama
Emily Graham
Doris McQuiddy

Arizona
Randy Lazar

California
Melody James
Karen Johnson
Connie Varner

Illinois
Kathryn Cox
Jack Shook

Iowa
Dee Ann Wilson

Maine
Pauline LaMontagne
Susan Parks
David Stockford

Massachusetts
Jackie Belf-Becker
Donna Bodley
Darlene Lynch
John Stager

Minnesota
Darren Kermes

Montana
Tim Harris

Virginia
Doug Cox
Judy Douglas
Don Fleming
Art Stewart

Washington
Sandy Grummick
Pam McPartland

Wyoming
Sara Mofield
Rebecca Walk

Table of Contents

Introduction 1

Overview 1
Methodology 1
Organization of Document 1

Complaints 2

Background and Legal Requirements 2
Findings Related to the State Complaints 3
State Administration of Complaints 3
State Staffing for Handling Complaints 4
Data Management and Evaluation of Complaint Process 5
Timelines in Complaint Resolution 5
Training for Complaint Resolution Staff 6

Mediation 6

Background and Legal Requirements 6
Findings Related to Mediation 7
State Administration and Staffing for Mediation 7
Qualifications and Training of Mediators 7
Mediation Process 8
Mediation Agreements and Follow Up 10
Data Collection and Evaluation of the Mediation Process 10

Due Process Hearings 11

Background and Legal Requirements 11
Findings Related to Due Process Hearings 13
State Administration of Due Process Hearings 13
State Staffing and Employment of Hearing Officers 14
Data Management for Hearings 14
Timelines in Due Process Hearings 15
Training for Due Process Hearing Officers 15
Evaluation of Due Process Hearings 15

Dispute Resolution Components as a System 16

Relationship Between Dispute Resolution System and Monitoring 17

Other Types of Dispute Resolution 18

Early Complaint Resolution 18
Local or Regional Dispute Resolution 19
Facilitated IEP Meeting 21
Pre-Hearing Options 21

Informing Parents and the Public about Dispute Resolution Options 22

Changes Under Consideration and Recommendations from States 22

Concluding Remarks 23

References 24

Dispute Resolution – A Review of Systems in Selected States

Introduction

Overview

Since the passage of the Education for All Handicapped Children Act in 1975 (P.L. 94-142), the resolution of disputes in the field of special education has been one important way to insure that students with disabilities receive a free appropriate public education. Unfortunately, in too many jurisdictions dispute resolution consumes an inordinate amount of time and resources. Over the past decade, Project FORUM at the National Association of State Directors of Special Education (NASDSE) has produced a number of policy documents to inform the field of the status of state dispute resolution efforts and provide direction for improvement in this critical policy area. Most recently, Project FORUM collected information from ten states on their current dispute resolution systems and from two additional states on other procedures they have put in place that are known as early dispute resolution options. This document summarizes information from these twelve states. The work was carried out as part of the Project's work on its Cooperative Agreement with the U.S. Department of Education's Office of Special Education Programs (OSEP).

Methodology

Project FORUM selected the ten states that form the basis of this policy analysis in consultation with another OSEP-funded project, the Consortium for Appropriate Dispute Resolution in Special Education (CADRE).[1] The 10 states were selected to represent diversity in terms of geography and size of population, as well as the age and nature of the state's dispute resolution system. The state sample includes Alabama, California, Illinois, Iowa, Maine, Massachusetts, Minnesota, Virginia, Washington and Wyoming. Two additional states were added to augment only the information about early dispute resolution strategies—Arizona and Montana. Telephone interviews were conducted with up to four persons per state, January through May 2002.

Organization of Document

The three primary components of a state's dispute resolution system—complaints, mediation, and due process hearings—are discussed separately in the next three sections of this document. Each section includes background and legal requirements related to the specific component, in addition to information gathered from the states in the Project FORUM sample. The final sections discuss the dispute resolution components as a system, their relationship to state monitoring activities, other procedures for resolving disputes and informing parents and the

[1] CADRE provides technical assistance to state departments of education on implementation of the mediation requirements under IDEA. It assists parents, educators and administrators to benefit from the full continuum of dispute resolution options that can prevent and resolve conflict and ultimately lead to informed partnerships that focus on results for children and youth. For more information about CADRE, go to the following webstite: www.directionservice.org/cadre. In addition to its technical assistance activities, CADRE has been working with NASDSE on a study of state dispute resolution data gathering procedures and an integrated dispute resolution database. This CADRE/NASDSE study is not part of Project FORUM's work.

public about all options. The concluding remarks are a reflection on the dispute resolution components as an integrated system.

Complaints

Background and Legal Requirements

The right to file a complaint with a State educational agency (SEA) about compliance with laws and regulations has been a part of the Individuals with Disabilities Education Act or IDEA (first named the Education of the Handicapped Act) since 1977 when the regulations implementing P.L. 94-142 were first adopted. Originally, Section 121a.602 of the IDEA regulations required states to adopt effective procedures for reviewing, investigating and acting on any allegations of substance "...that are contrary to the requirements of this part." States had to designate a responsible individual, take steps to achieve compliance, and provide for the use of sanctions [211 IDELR 148]. Subsequently, the "complaint resolution procedures" were made applicable to all State administered programs and included in the Education Department General Administrative Regulations (EDGAR) at 45 CFR Sec. 100b.780-782. (In November 1980, the regulations were transferred and re-designated as 34 CFR §76.) In July 1992, they were removed from EDGAR and put into the IDEA regulations [57 FR 30328, 30342, July 8, 1992]. Later that year, when the final IDEA Part B revised special education regulations were published, the state complaint procedures sections were re-numbered 34 CFR Sections 300.660-62 and some changes were made based on comments received during the rule-making process. Changes at this time included the addition of requirements for sending notices about the states' procedures, for the SEA to issue a written decision including the reasons for its final decision on each allegation in the complaint and for the SEA to establish procedures on implementing the final decision (OSEP Memorandum 94-16) [21 IDELR 85].

The IDEA regulations issued in 1999 continue the requirement that each SEA adopt procedures for the filing and resolution of a complaint by an organization or individual that a public agency has violated IDEA Part B and disseminate the procedures widely to parents and other interested parties [34 CFR §300.660 (a)]. At a minimum, state complaint procedures must include a time limit of 60 calendar days to investigate and review all relevant information and issue a written decision, although provision can be made for time extensions. One of the changes in the 1999 regulations is the additional requirement that, in resolving a complaint in which it has found a failure to provide appropriate services, an SEA must address how to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child, and must also make appropriate future provision of services for all children with disabilities [34 CFR §300.660 (b)(1); 64 FR 12646, March 12, 1999].[2] Another change clarifies that, if an issue in a complaint is the subject of a due process hearing, that issue (but not any issue outside of the hearing) would be set aside until the conclusion of the hearing, and the decision on an issue in a due process hearing would be binding in a State complaint resolution [34 CFR §300.661 (c); 64 FR 12646, March 12, 1999]. A section was added providing that the complaint must allege that a violation occurred not more than one year prior to the date that the complaint was received unless a longer period is reasonable

[2] A second citation to the Federal Register (FR) has been added here and at several points throughout the document to provide historical information for the reader.

because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint was received [34 CFR §300.662(c); 64 FR 12646-12647, March 12, 1999].

Findings Related to the State Complaints

State Administration of Complaints

For the 10 states in the study, the SEAs directly administer state complaint procedures. A complaint to the SEA is initiated in writing—either a letter or a state form is completed alleging violation of state or federal special education law or regulations by an LEA. The SEA usually assigns a coordinator to manage the processing of the complaint and to maintain the required documentation. All of the 10 states make provisions for parents who need the services of interpreters because they do not understand English or require sign language interpretation.

The SEA staff responsible for processing complaints usually begins by opening a file and contacting the special education administrator and the superintendent at the LEA. Sometimes all the SEA staff needs is the school system's response and the complainant's submission of documents to determine whether a school system has violated a requirement. At other times, it is necessary to take further action such as a site visit or the collection of additional data from the parties to make a determination. Copies of all correspondence and other documentation related to the complaint are provided to all parties. The amount of contact between and among the parties prior to the SEA determination varies depending on the nature of the issues involved.

An SEA may set timelines for responses or other actions to be followed within the overall 60-day period available under federal requirements for processing the complaint. For example, in Alabama, the assigned state complaints resolution staff member has 20 days within the overall 60 day timeline to review additional information received, work with other SEA consultants or any other persons who may have knowledge about a specific issue to gather additional information regarding the complaint issue(s), and sometimes, depending on the issue(s), to have a review from the general counsel for legal sufficiency. All states surveyed allow for the use of an extension to the 60-day timeline with the agreement of all parties involved or if exceptional circumstances warrant the extension. The complainant may withdraw a complaint based on information submitted by the local education agency (LEA) or interactions that occur in the course of the investigation.

In California, investigation reports are completed in a standard format, a fast-track format or by a Report of Local Complaint Resolution. A standard format is typically utilized for multi-allegation investigations, multi-district investigations, inter-agency investigations, or for those investigations that include complex issues and require a great deal of evidence. The fast-track format is typically utilized for those complaints where the parties are in agreement regarding the status of compliance or when the evidence is clearly indicative of the conclusion (i.e., extensive investigation is not necessary). A Report of Local Complaint Resolution is used when the complainant and the LEA resolve a complaint and mutually develop a report that is sent to the SEA. The SEA reviews those reports and amends them as necessary prior to final approval and dissemination. Also, a complaint may trigger another dispute resolution process, such as a

request for mediation or a request for due process hearing, during the complaint investigation or following the release of a letter of findings.

After the investigation is completed, a letter of findings is sent to the party who filed the complaint, with a copy to the local school superintendent and to the local special education administrator. The letter of findings usually includes a statement of the complaint, the issue(s) involved, information received by both parties, investigative actions taken by the SEA, the findings of violation or compliance with requirements and corrective activities, if any, needed by the district. In several of the 10 states studied, either party may ask for reconsideration after receipt of a completed compliance report. For example, in California, within 35 days of receipt of a completed compliance report, either party may send to the Superintendent of Public Instruction by mail a request for reconsideration on the basis of a concern regarding (1) procedural requirements; (2) accuracy of evidence that affects the conclusion of compliance/non-compliance; and/or (3) a disagreement with the conclusion of compliance/non-compliance. Virginia recently added a complaints appeal process in which an independent review is carried out by two contract persons who are hearing officers. Maine's Education Statute offers parties the right to appeal a complaint investigation report to a due process hearing within 30 days of either party's receipt of the report.

State Staffing for Handling Complaints

The number of state staff involved in the complaints system varies greatly depending on the size of the state and its department of education. A complaint may be handled completely at the SEA level or may involve other levels of the education system. For example:

In California, there are approximately 14 consultants investigating complaints, three support staff and one analyst. This group handles about 1,200 complaints per year.

In Iowa, the process and staffing follows another pattern. One individual in the Bureau of Children, Family and Community Services, Iowa Department of Education has been designated as the *complaint officer* to receive and initiate the appropriate course of action to bring about the resolution of complaints. The complaint officer sends a copy of the formal complaint to the special education director of the appropriate intermediate organization called an area education agency (AEA) where the investigation is conducted. After preliminary investigation by the AEA and before a report is sent to the SEA, the complaint officer gives the complainant an opportunity to submit additional information (orally or in writing) and/or respond to the preliminary findings. The complaint officer maintains a complaint log. After a letter of findings is submitted from the AEA Director and sent to the complainant, the Department may conduct a "second round" investigation based on any issues the complainant still wants to pursue or the Department determines is needed for resolution.

In Illinois, SEA staff members investigate complaints from a division called Special Education Services, centralized in the Springfield office. One staff member, designated as the *complaint coordinator*, works full time on complaint investigations. In addition, seven others conduct complaint investigations, although this is not their primary role in the division.

Maine contracts with a private firm, Impartial Resolutions, Inc. (IRI), to handle all aspects of its dispute resolution. The SEA sets up the terms of the contract for services from the contractor. IRI makes available from its staff a pool of mediators, hearing officers and complaint investigators who work on cases from the Maine SEA. Maine uses a two-page form that must be completed to make a request for mediation, a complaint, a hearing, or an expedited hearing.

Data Management and Evaluation of Complaint Process

Data on complaints are kept by states in both paper and electronic form. Hard copies of all documents are maintained in a traditional paper file and most states have at least a basic type of database for tracking purposes. For the most part, however, records pertaining to complaints are not integrated with other dispute resolution data. For example, in Alabama, data about complaints are made available on the state web site, although personally identifiable information is not included. Some integration with other types of dispute resolution occurs as a result of staff coordination, but it is informal and data management for complaints is a separate activity. In Illinois, data collected for complaints are separate from a sophisticated database that has been developed for due process. Likewise, complaint system records in California are separate and not routinely made available to the contracted agency that handles mediation and due process.

By contrast, for the purpose of identifying cases in common, the Massachusetts electronic tracking of complaints is linked to the Bureau of Special Education Appeals (BSEA) that handles mediations and hearings. By means of telephone communication between the complaint investigator and BSEA staff member, the complaint investigator can find out immediately if a mediation or due process hearing is currently underway on the same issue with the same party or has been in the past. Washington has database tracking systems for complaints and due process hearings that are similar and the complaint investigator can determine if a request for a due process hearing has been filed before beginning an investigation.

Some of the states interviewed for this study conduct analyses of various aspects of their complaint systems. For example, California gathers information regarding how well timelines were met and sends a survey form to the parties following the submission of the complaint report. Virginia prepares an annual report that includes the number of complaints received and how they were resolved, as well as the major issues by category, subcategory and LEA. Iowa reported that an informal analysis is completed periodically regarding complaint data. Iowa also uses university students to analyze complaint and other dispute resolution data. However, a comprehensive, systematic evaluation of complaints is not conducted by any of the states in this study.

Timelines in Complaint Resolution

All states include the 60-day limit for issuance of a finding on a complaint that is required by federal regulations, but they also allow for extensions. Some states structure interim requirements for specific parts of the 60-day limit. For example, Alabama procedures call for a limit of 20 days within the 60-day limit for the LEA to provide a response to the complaint issues. Virginia requires that written notice of the filing of a complaint be sent to both the LEA

superintendent and special education director within seven business days of its receipt by the SEA. In Washington, the LEA has 20 days to investigate and respond to the SEA in writing.

Training for Complaint Resolution Staff

SEA respondents described both formal and informal types of training for their staff who handle complaints. States typically send staff to specific training institutes or conferences on dispute resolution or legal issues. Staff meetings are also considered an opportunity to do training.

A few states described specific training approaches. Massachusetts and Virginia assign responsibility for the training of new staff to supervisors and match each new employee with a more experienced one for shadowing and mentoring. The new employee gradually begins to work independently depending on prior background and experience. By contrast, Maine does not provide formal training in this area since that state contracts with a private vendor for complaint investigation serves and the vendor is responsible for providing appropriately qualified and trained staff.

Mediation

Background and Legal Requirements

Mediation is a process that has been used by many states since the 1970s to resolve disputes in a wide array of fields, including education (Schrag, 1996). During mediation, an impartial person, referred to as the mediator, assists the disputants with identifying areas of disagreement and concern and developing mutually agreeable solutions. Mediation is a voluntary process and the mediator does not have authority to impose an agreement.

States began using mediation to resolve special education disputes in the mid 1970s and by 1994, 39 states were operating special education mediation systems (Ahearn, 1994). In spite of the prevalence of this method of dispute resolution, it was not until the Individuals with Disabilities Education Act (IDEA) was reauthorized in 1997 that states were required to offer mediation, at a minimum, whenever a due process hearing was requested.

Regulatory provisions for mediation under the 1997 amendments to IDEA, issued March 12, 1999, require the following:

- Mediation must be voluntary and not deny or delay a parent's right to a due process hearing.
- A qualified and impartial mediator who is trained in effective mediation techniques must conduct the mediation.[3]
- The state must maintain a list of qualified mediators who are knowledgeable in the laws and regulations relating to the provision of special education and related services.

[3] The single-mediator model is the only approach mentioned in the regulations although there are other models that have been used by states such as co-mediation and mediation panels.

- The mediator may be selected at random from the list or the parties may agree on the selection of a qualified mediator.
- The mediation sessions must be scheduled in a timely manner and held at a location that is convenient to both parties.
- Discussions that take place during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.
- The mediated agreement must be put in writing.
- All costs related to the mediation process are the responsibility of the state. [34 CRF §300.506; 64 FR 12611-12612]

Findings Related to Mediation

State Administration and Staffing for Mediation

The ten states involved in Project FORUM's study vary considerably in the length of time they have provided mediation. Four states implemented mediation more than 20 years ago—Massachusetts in 1974, Iowa and Wyoming in 1976, and Alabama in 1978. Three other states implemented mediation in the 1980s—California (1980), Illinois (1982) and Maine (1984). Minnesota, Washington and Virginia began offering state mediation most recently—1992, 1994 and 1999, respectively.

Six of the ten states administer mediation directly (Alabama, Iowa, Massachusetts, Minnesota, Virginia and Wyoming). In two of the other four states, independent contractors administer each state's mediation system (California and Washington). Contracts are periodically re-bid through a competitive *request for proposal* process. In Washington this occurs every three years and it's this state's goal to keep mediation as separate from the SEA as possible. In Maine, independent contractors preside over the due process mediations; however, case management is administered by the SEA Due Process Office. This past year, Illinois began to partially utilize independent contractors as mediators to alleviate the strain on the mediation system caused by the retirement of many veteran mediators. The states that contract out mediation, in part or in whole, have an SEA person or unit that works directly with the contractor and fields calls regarding mediation that come to the SEA. In Illinois, this individual also assigns mediators and monitors the system.

Of the states that administer their mediation program, some use SEA staff as mediators. For example, Alabama uses SEA staff specifically trained in mediation and Illinois uses a combination of trained SEA staff and independent contactors. In the future, Illinois plans to utilize only contractual mediators, although trained SEA staff may continue to serve as mediators on an as-needed basis. In summary, most states that administer their mediation systems use outside contractors, non-SEA staff, administrative law judges or a combination as mediators.

Qualifications and Training of Mediators

The states involved in this study do not have a strict set of pre-requisites for mediator applicants; however, knowledge of, special education is a desired pre-requisite. Some states, such as California and Wyoming, report that many of their mediators have had previous mediation

experience. The California interviewee also noted that it is not uncommon for mediators in that state to have had previous experience in special education administration. Other backgrounds include, but are not limited to, law, social work, nursing, teaching, psychology and teacher training.

Although new mediators come to the job with varied backgrounds, in several states the initial training is clearly prescribed. For example, in Alabama, the Center for Justice has been utilized to provide formal training, including a minimum of three observations for mediation candidates. The Iowa Peace Institute has a four-day training in that state and observation and co-mediation continue as long as necessary for the new mediator. Massachusetts and Virginia require 32 and 20 hours, respectively, of initial mediator training and Virginia also has a period of observation by experienced mediators, coached mediations and mediations with consultation available. In Illinois, where there are currently a number of long-time mediators, initial training is based on the amount of previous mediation experience. Illinois SEA staff provides a two-day training for new contractual mediators. In addition, contract renewal in Illinois is contingent upon participation in at least one training annually. In Maine and Washington, the mediation contractor is responsible for initial/basic and on-going training; however in Washington, SEA staff may be involved.

In states where the mediation system is administered by the SEA, on-going training is provided through various local and national meetings/conferences. For example, in Wyoming, each April nationally recognized experts are convened to provide training. Alabama requires a minimum of 30 hours per year of on-going training. Several interviewees noted that regular meetings held with mediators to discuss issues and problems are an important part of on-going training and support. Virginia requires a minimum of five mediated or co-mediated cases in a 12-month period for an individual to be considered for the mediator list.

Mediation Process

Eight of the ten states involved in this study make mediation services available anytime parties have a dispute. Iowa offers mediation only at the time of request for a due process hearing and mediators are sent to the first day of every hearing if one party requests the presence of a mediator, in the event that the parties change their minds about mediation. Similarly, Wyoming offers mediation only after a request for a hearing has been filed. Although mediation is available anytime in Massachusetts, interviewees noted that most mediations are triggered by a rejected IEP because LEAs are required to inform the Bureau of Special Education within five days of a rejected IEP. The SEA then sends information about mediation services to the parties.

Mediators are typically assigned on a rotating basis, with consideration of the geographical location of the parties to minimize travel time and costs; however, random assignment is used in Illinois and may be specifically requested by a party in Massachusetts if there is concern about the impartiality of a mediator from a particular location or for any other reason. In Maine and Virginia, mediators are assigned on a rotating basis without consideration of geographical location of the parties. In Wyoming, where mediators and hearing officers are selected from the same list, the same person does not serve both functions for a specific case if both mediation and a due process hearing take place. Maine has some overlap in the persons on the mediator,

complaint investigator and hearing officer lists, but as in Wyoming, the same person does not serve multiple functions for the same case.

The timeline for mediation varies from state to state; however, mediation triggered by the request for a due process hearing may not exceed the 45-day timeline specified in the Federal regulations unless both parties agree [34 CFR §300.511]. In California, mediations are provided within 15 days of the request and in Minnesota mediation must be completed within 30 days of the request. In Maine, a mediator is usually assigned within two days and the SEA Due Process Office schedules the mediation and notifies the parties of the date and time. Parties make requests for an extension directly to the mediator. Illinois makes every effort to hold a mediation within 30 days of both parties' agreement to participate in the process. The timeline may be extended beyond 30 days if both parties agree and such an extension does not interfere with any due process timeline that may be involved. In Alabama and Massachusetts, the parties determine timelines; however, in Massachusetts, most mediation sessions are scheduled within 30 days of request.

Mediations typically take place at the student's school or other LEA facility, unless one or both parties request a neutral site. In these cases, the mediation is held at a library or other community site. All states make provisions for parents who request document translation or interpreters because they do not understand English well or require sign language interpretation. States also commented that they encourage parents with language or literacy problems to have someone else help them and attend the mediation sessions with them.

Although it was not within the scope of this study to collect data on the length of mediations, anecdotal information suggests that mediations are usually completed in one day. The one-day session, however, could last two to eight hours. Parties may agree to continue longer on a given day or reconvene on another day.

There is limited information available from this study about the role of attorneys in mediations, but it appears that out of the ten states in the study, none outright prohibits the presence of attorneys.[4] For example, Maine's regulations prohibit the attendance of an attorney or non-attorney employee of a law firm representing an LEA at a mediation (or complaint investigation meeting) unless the parents have first given advance written notice to the LEA that an attorney or non-attorney employee of a law firm will represent them at the mediation. Minnesota strongly discourages attorney presence, but does not prohibit it. In most of the other eight states, both parties must be informed and agree on attorney presence. In Iowa, all parties must be informed about attorney presence, but there is no opportunity to agree or disagree. One interviewee said that sometimes attorneys actually help move the mediation process along.

In Virginia, either party may bring an attorney or advocate to the mediation session. However, the state's written materials explain that attorneys may act only as advisors and may not formally represent a party. Attorneys may provide guidance to families and schools prior to mediation, telephone or caucus consultation during mediation and review agreements following mediation.

Overall the goal is to have an equal and limited number of people involved on each side of the mediation. It is the role of the mediator to insure balance. In Maine and Virginia, for example,

[4] The presence of attorneys at mediation sessions is not addressed in the IDEA regulations.

the mediator has the right to limit the number of people present. In Illinois there is typically a limit of three persons per side. California mediation begins with all parties in the same room. If the parties wish to meet separately, they will do so. The Maine interviewee noted that the mediator might meet separately (caucus) with each party if the parties desire or if it appears this would facilitate the mediation process.

In light of the federal requirement that the mediation proceedings be confidential, mediation sessions are not open to the public, press or any other persons who may be interested in the issue unless specifically agreed to by both parties. In an effort to protect confidentiality, the mediator's notes are shredded in Alabama and Massachusetts. Alabama also has a sign-in sheet that is used as a pledge to maintain confidentiality of the discussions by all participants. Iowa has a similar sign-in pledge that includes the following statement: "...the discussions and offers of compromise reached in the mediation cannot be used as evidence or as arguments in a future hearing or civil proceedings."

Mediation Agreements and Follow Up

At the conclusion of the mediation session(s) in all 10 states studied, the mediator develops a written agreement with the parties. Both parties sign the agreement and receive a copy, except in Iowa where signing is only done prior to the mediation (described in the above paragraph). Depending on the nature of the agreement, its contents may be disclosed to the IEP team or other entity involved in implementation of the agreement. In Massachusetts, the parties may agree to delay signing the written agreement until a later point in time, presumably to give each party time to think about the proposed agreement, but the mediation is not complete until both parties sign. Prior to signing the agreement in Virginia, the disputants may request third-party consultation.

In Wyoming and Iowa, the SEA staff member who processed the mediation request follows up to determine if the agreement is being implemented. The other eight states involved in this study do not have a standard procedure for post-agreement follow up, but in several states the parties are generally informed that they may contact the mediator if clarification is needed regarding the agreement. In Massachusetts, the mediator may choose to bring the parties together again. Parties are also informed that they can access the state complaint system or request a due process hearing if the mediation results are not satisfactory.

In the event that there is a due process hearing, access to the mediation agreement varies slightly from state to state. In Minnesota, a mediation agreement may only be disclosed by consent from both parties and in Iowa the agreement may be disclosed if one party provides a compelling reason to the administrative law judge that the agreement should be part of the record. In Alabama, Maine and Virginia, a signed mediation agreement may be used in a subsequent hearing or as part of a due process settlement.

Data Collection and Evaluation of the Mediation Process

The type of data collected on mediations varies widely from state to state, as does the method of collection (electronic database, paper forms and combination). The most common data collected

are dates that track the mediation process (e.g., mediation requested, mediator assigned, mediation held, agreement signed), basic information about the parties (e.g., name and LEA) and broad descriptions of the nature of the issue being mediated. With these data, the SEA may count the number of requested mediations and agreements reached, monitor the process of pending cases and identify LEAs where mediation has been requested. Electronic databases allow for the generation of reports by issue or LEA. Less common is the collection of student-specific data (e.g., disability category, educational environment, special education services) that would provide information about the relationship between student characteristics and mediated disputes.

In seven of the ten states involved in this study (California, Illinois, Iowa, Maine, Minnesota, Virginia and Washington), feedback is solicited from the parties as a means of evaluating their mediation systems. Using surveys, parties are asked about the mediation process, the mediator and the agreement/outcome. Although survey return rates are low (e.g., approximately 55% in Virginia), these data provide some information on consumer satisfaction. In Iowa, a graduate student provided evaluation assistance to the SEA. Maine's independent contractor solicits and compiles feedback for internal evaluation of its services. In California and Washington, the independent contractors collect data and submit periodic reports (e.g., California–quarterly, Washington–annually) that include mediation statistics (e.g., number held, issues addressed) and satisfaction data. In Illinois, an SEA staff person sends and collects the surveys and analyzes the data, which are used to provide feedback to the mediators and are incorporated into internal mediation system reports. None of the ten states has had an independent evaluation done of its mediation system. Several interviewees noted that their states are discussing additional evaluation activities. Two states in the study (California and Virginia) conduct annual personnel evaluations of each mediator using independent contractors.

Due Process Hearings

Background and Legal Requirements

Some states adopted laws to provide educational rights to children with disabilities before 1975, and some due process procedures were put in place as the result of a series of law cases and consent decrees such as *PARC v. Commonwealth of Pennsylvania* in 1972. The due process clauses of the Fifth and Fourteenth Amendments to the U. S. Constitution were the basis for those decisions and for the provisions that were put into the federal statute P.L. 94-142 (now IDEA) signed into law on November 29, 1975. The new law required all states that received federal assistance under the Act to guarantee children with disabilities the right to an education in the least restrictive environment and the right to procedural due process. States had to gear up to implement the many new requirements of this law and the impartial due process hearing was a major addition to state special education responsibilities. The requirement has been maintained with some additions and clarifications throughout the reauthorizations of the law. (For more complete historical details, see Ballard, Ramirez and Weintraub, 1982.)

The IDEA regulations state that a parent or public agency may initiate a hearing on any matter relating to the identification, evaluation or educational placement of a child with a disability or the provision of FAPE (free appropriate public education) to the child [34 CFR §300.507(a)(1)].

Parents who request a hearing must, at a minimum, be informed of the availability of mediation and of any free or low-cost legal and other relevant services available in the area [34 CFR §300.507(a)(2) and (3)]. The parent is required to inform the public agency of the nature of the problem and a proposed resolution of the problem and each SEA is required to develop a model form to assist parents in filing a hearing request. However, the public agency may not deny or delay a parent's right to a due process hearing for failure to provide the required notice [34 CFR §300.507(c)(4)].

The timeline for completing the final decision and mailing a copy of that decision to all parties is 45 calendar days, although a hearing or reviewing officer may grant an extension at the request of either party [34 CFR §300.511].

The IDEA regulations describe an impartial hearing officer:

(a) A hearing may not be conducted –
  (1) By a person who is an employee of the State agency or the LEA that is involved in the education or care of the child; or
  (2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.
(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.
(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons [34 CFR §300.508].

Section 300.509 specifies certain rights for those involved in a hearing:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;

(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

In addition, each party to a hearing is required to disclose to all other parties all evaluations completed and recommendations that the party intends to use at the hearing at least five business days prior to the start of the hearing. Parents must be given the right to have a child who is the subject of the hearing present, to open the hearing to the public, and to obtain a record of the hearing and the findings of fact and decisions at no cost. The public agency is required to transmit the findings and decisions for each hearing to the state special education advisory panel

and to make the findings and decisions available to the public after all personally identifiable information has been deleted.

Any party involved in a hearing may appeal the decision. If the hearing is conducted by a public agency other than the SEA, the appeal may go to the SEA. A "civil action with respect to the complaint" may be brought in any state court of competent jurisdiction or in a United States District Court without regard to the amount in controversy [34 CFR §300.512(a)].

A court may award "reasonable attorney's fees" as part of the costs to the parent of a child with a disability who is the prevailing party [34 CFR §300.513(a)], although the amount may be reduced if the court determines that the parent unreasonably protracted the final resolution, the amount unreasonably exceeds prevailing rates in the community, the time and legal services furnished were excessive considering the nature of the action, or the attorney representing the parents did not provide to the school district the required information in the due process complaint [34 CFR §300.513(c)(4)].

The regulations also contain some specific provisions on the child's status during a hearing. The requirement that a child involved in a complaint must remain in his or her current educational placement during any administrative or judicial proceeding, unless the SEA or LEA and the parents agree otherwise, is known as the "stay-put provision" [34 CFR §300.514(a)].

A number of specific provisions related to due process procedures when disciplinary action against a student is involved were added to IDEA in the 1997 amendments. Sections 300.521, 525, and 526 cover the authority of a hearing officer to order a change in placement to an interim alternative education setting for not more than 45 days, parental right of appeal concerning manifestation determinations and decisions related to a child's behavior and child placement during appeals. A child who has not been determined to be eligible under IDEA but who has engaged in behavior that violated a rule or code of conduct of the LEA may be covered by these IDEA protections if the LEA had knowledge that he/she was a child with a disability before the behavior that precipitated the discipline occurred [34 CFR §300.527]. IDEA also requires states to establish procedures for an expedited due process hearing [34 CFR §300.528].

Findings Related to Due Process Hearings

State Administration of Due Process Hearings

State due process systems are structured in very similar ways. However, there is one major difference among states—the use of a single or two-level structure. States use either a *one-tier system* in which the hearing is initiated at the state level with no formal hearing procedure at lower levels, or a *two-tier system* in which a hearing takes place first at a lower level—usually the school district—with the right of appeal to a state-level hearing officer or panel. Currently, only 17 states use a two-tier system and this number has been declining (Ahearn, 2002). Among the 10 states involved in this study, only one (Minnesota) uses a two-tier system.

States manage the hearing system either directly through the state special education unit or another entity within the SEA or state government, or through contractual arrangements with a

private provider. California contracts with the McGeorge School of Law and the process is coordinated with the Procedural Safeguards and Referral Services Unit of the Department of Education. The process is similar in Maine, the other state in this study that contracts with a private provider, Impartial Resolutions, Inc., for all of its presiders at dispute resolution forums.

All states make provisions for parents who need documents translated or who need the services of interpreters because they do not understand English or require sign language interpretation. States also commented that they encourage parents with language or literacy problems to have someone else help them and attend the due process hearing with them.

State Staffing and Employment of Hearing Officers

States that contract with a private provider for hearings assign SEA staff to coordinate and provide oversight to the process. When the system is administered directly by the SEA, a unit of the SEA or another state agency is assigned to manage the logistics such as assignment of the hearing officer and assistance in scheduling and data management. In Washington, the State Office of Administrative Hearings handles special education due process hearings. Although a hearing officer may not be an employee of the state agency or the LEA that is involved, the IDEA regulations clarify that mere payment for serving as a hearing officer does not make that person an employee [34 CFR §300.508].

State requirements regarding the qualifications of hearing officers vary. Some states require hearing officers to be attorneys, while in other states hearing officers may be attorneys or other professionals such as special educators or psychologists who have been trained in handling dispute resolution. For example, in Iowa hearing officers are called "administrative law judges," but may not have law degrees, while Virginia requires that special education hearing officers be attorneys.

Federal regulations require that the SEA or another state agency (e.g., the Attorney General's Office as in Alabama) maintains a list of the persons who serve as hearing officers, including a statement of the qualifications of each of those persons [34 CFR §300.508 (c)]. States periodically update this list and some states, such as Virginia, make the list available on their websites.

Data Management for Hearings

States use a combination of paper and electronic strategies for data management in due process hearings. In most states, data management for hearings is more sophisticated than those for other types of dispute resolution, at least partially due to the fact that hearings are the most formal type of dispute resolution and have been a mandated component of the law since it was originally passed. Most states continue to maintain data in separate systems, but some are developing integrated databases to track dispute resolution across systems. For example, in Massachusetts and Maine, mediation and due process data are maintained in the same database that allows for tracking by district across both systems. Iowa has implemented an integrated database across its due process and other dispute resolution systems.

Timelines in Due Process Hearings

States have incorporated the IDEA time limit of 45 days for completion of a hearing and issuance of a decision, although all allow hearing officers to grant an extension. Some states have adopted interim deadlines to help ensure that the timeline will not be violated. For example, Massachusetts processes all hearing requests the day after they are received, sets a hearing date for 20 days from that date and requires that hearing officers issue a decision no later than 25 days after the closing of the hearing record, unless, pursuant to the IDEA regulations [34 CFR §300.511(c)], specific extensions of time are granted by the hearing officer at the request of either party.

Training for Due Process Hearing Officers

States carry out similar activities to help hearing officers improve their skills and remain up to date on due process issues. States provide funds for them to attend national or state level conferences and sometimes schedule specific training activities such as the quarterly meetings provided in Iowa, Illinois and Minnesota and the annual training that Wyoming requires for all mediation and hearing officers. Wyoming also uses training assistance provided through the Mountain Plains Regional Resource Center that maintains a working group on due process. The Minnesota interviewee noted that to guard against training becoming an inappropriate imposition of state direction and control that would interfere with hearing officer neutrality, at least half of that state's training activities are provided by outside experts.

Virginia has added a unique component to its training requirement to enhance the hearing officers' knowledge of the mission and operation of schools that provide services to students with disabilities. Hearing officers must make an annual field visit to a special education program in one of the public schools, private day schools or residential facilities that includes a minimum of two hours observing students with disabilities, obtaining information on the service delivery models and the use of assistive technology. The hearing officers are reimbursed for their travel expenses.

In states that contract with private providers for their due process hearing services, responsibility for training usually resides with that contractor. For example, in California, the McGeorge School of Law provides four weeks of training for new hearing officers that includes observation of hearings being conducted by experienced hearing officers. Also, new officers are observed conducting hearings and feedback is provided.

Evaluation of Due Process Hearings

Very few states compile data on the outcomes, participant satisfaction, or effectiveness of their due process systems. However, in February 2000, California issued a report (Imobersteg, 2000) on an extensive independent evaluation of the effectiveness of its due process system that was solicited in connection with a revision in the bidding for a new contractor. This study concluded that the hearing and mediation systems were under-funded and, according to interviewees, the study was instrumental in achieving an increase in resources available for the system. The study also reported on input from professionals and the public on all aspects of the system. The report

emphasized that broader changes are needed to enable change to occur in the systems: "The hearing and mediation systems cannot be viewed in isolation. It is about relationships in the classroom, the school and the district, the level of trust and the need for a shared partnership. Disputes are not always about the stated issues, rights, and responsibilities. Often, the real issues are ones of respect, communication, and the perception of fairness. These are the keys to the effective resolution of the disputes" (Imobersteg, 2000, p. 11).

Except for special studies, most states gather only minimal evaluative data on how well their due process systems are working. Some states or their contractors use an evaluation form for those who participate in mediation or a hearing, but only Virginia reported compilation of such data into a formal report. Virginia's report also includes data on adherence to timelines, number of extensions and reasons for extensions. Virginia also uses an evaluation instrument for those who participate in a hearing and reports that the return rate is higher among school personnel and school board attorneys than from parents and parent attorneys. In Maine, the private contractor has participants complete a survey form after mediation is held, but it is only for the contractor's internal use. Some states gather data on procedural issues, such as how well timelines are met, or the issues most frequently involved in complaints. For example, Iowa compiles summaries of complaints and an evaluation form is mailed to those involved in preappeal conference or mediation, but the return rate is very low. Iowa is in the process of implementing more evaluation procedures with the parties regarding their dispute resolution experience. In Illinois, those involved in a hearing are asked to complete an evaluation questionnaire, but the information is used to evaluate specific hearing officers and only minimally the process as a whole.

Some states issue an annual report on due process hearings that includes a variety of statistical and demographic information, but the content is not usually evaluative of the system.

Dispute Resolution Components as a System

Analysis of the states' dispute resolution systems revealed that the extent to which the three main components of the system are coordinated or connected is very much a function of, or reflected in, the administrative structure or management of the three components. One respondent suggested that separate management might have been put in place when mediation was offered as a new form of dispute resolution in a state that previously had complaints and hearings as the only recourse. Also, such separation can help to distinguish the options in the public's mind.

In four of the ten states—Iowa, Illinois, Maine and Minnesota—all components are managed or administered by the same entity and that entity is the SEA. However, in Maine, a contractor provides the individuals who preside over the due process forums and these individuals are responsible for writing the complaint investigation report drafts and hearing decisions. Iowa's dispute resolution coordinator monitors activity and issues across all components. In Illinois, the files of all three components are reviewed to get a sense of the disputed issues in a particular LEA.

Each component is managed separately in Washington. This is deliberate with the explicit goal of offering parties three separate options for dispute resolution. There is, however, an SEA

liaison assigned to the contractor who handles mediation and to the state office that handles due process hearings, and data for two of the three components are maintained within the SEA

In five of the ten states, two entities manage the components. In Massachusetts and Wyoming, the complaint component functions separately, and the mediation and due process components are administratively connected and function in a coordinated fashion. The Wyoming interviewee explained that this structure reflects the fact that a complaint is a "systemic issue," while mediation and due process hearings address "child-based issues." In California, the SEA administers the complaint system and a contractor administers mediation and due process. A slightly different structure exists in Alabama—complaints and mediations are combined administratively and due process is managed separately, all within the SEA; however, the interviewee noted that all components are coordinated. Virginia's Office of Due Process and Complaints manages these two components and the Office of Student Services manages the mediation system; both offices are in the same division.

Generally, data collection for the dispute resolution components reflects the administrative and/or management structure of the components, but states are moving towards linked databases or one database for all components. Iowa and Maine are the only states in the study sample that have an integrated dispute resolution database, which allows analysis and inquiry within and across complaints, mediation and due process systems. Three of the ten states—Alabama, Iowa and Maine—are implementing the CADRE/NASDSE database that was recommended by a national design team (Schrag & Schrag, 1999).[5] Several states specifically noted that linked databases or one combined database would facilitate coordination between dispute resolution components and evaluation of the overall system.

Relationship Between Dispute Resolution System and Monitoring

Interviewees from nine of the ten states described ways in which dispute resolution information is used during the SEA's monitoring of its LEAs; however, in one of the nine states the use of this information is not systematic or formalized. Before monitoring an LEA, the SEA will review data available on complaints, mediations and/or due process hearings. As described above, the nature and accessibility of dispute resolution data varies widely from state to state, which would impact the use of these data for monitoring. For example, a state may have a user-friendly data system for mediations and due process hearings, but not for complaints. The dispute resolution data is discussed during monitoring, if appropriate.

Following are several state examples of the relationship between the dispute resolution system and monitoring:

- In Iowa, an LEA may opt to review its dispute resolution information as part of the self-assessment process, but this is not required. Also in this state, the dispute resolution coordinator may provide information about dispute resolution to the SEA teams involved in the continuous improvement monitoring/school improvement process.

[5] See also www.directionservice.org/cadre.

- In Massachusetts, the Program Quality Assurance (PQA) unit examines complaint data in an ongoing manner and as part of its Coordinated Program Review System (CPR) to determine if there is any pattern of the complaints during the six-year CPR cycle. Additionally, at the subsequent Mid-cycle Review (typically three years after the CPR onsite visit), PQA again reviews any pattern of complaints and verifies the implementation status of all approved corrective action plans crafted in the course of complaint resolutions during the previous three-year period.

- The Special Education Review Team in Maine receives a list of dispute resolution decisions (e.g., mediation agreement, complaint investigation report and hearing decision) that involve the LEA to be monitored.

Other Types of Dispute Resolution

In addition to the state-level complaint, mediation and due process options for resolving disputes, a variety of other dispute resolution options, intended to be less formal and less adversarial, are used. In addition to the ten sampled states, two states were contacted only for information about early dispute resolution—Arizona and Montana.

Early Complaint Resolution

In Arizona, when the SEA receives a signed written complaint that meets all the requirements of a formal state complaint, one of the two *early resolution specialists* (ERS) is assigned to the case to begin *early complaint resolution* (ECR). The ERS has seven business days to broker a resolution between the parties (usually parent and school). This usually involves a number of telephone calls back and forth, but it could be done in a face-to-face meeting. The goal is to come up with an agreement that is satisfactory to both parties. The school is bound to implement that resolution agreement. If it does not, the parent may contact the SEA. The SEA would follow up on this matter as it would for a corrective action required for a traditional complaint investigation. In contrast to ECR, a traditional complaint investigation involves more evidence gathering from both parties, including a review of all documentation associated with the complaint. Also, a determination is made as to whether the school is in/out of compliance. If the school is out of compliance, a specific correction action is ordered. Arizona's ECR procedure has been in place since September 2001.

The Montana SEA may use 15 of the 60 days to resolve a complaint through the *early assistance program* (EAP), as specified in the state rules. A telephone call, e-mail, letter or personal encounter can activate the EAP process. In many cases, early assistance involves talking with an upset or confused parent who really does not want to file a formal complaint and may only need to know that she/he can request an IEP meeting. At other times, a call to the school is necessary. The interviewee described the EAP as giving guidance to parents and schools about how to hear both sides of an issue. Occasionally, the designated SEA staff member will meet face-to-face with both parties, but part-time consultants (10 or 12 are available) are viewed as more neutral and are more likely to travel to the location if the dispute cannot be resolved by telephone. Sometimes the consultant will participate in an IEP meeting. If the resolution is some type of

agreement, it is put into writing, but most of the EAP resolutions are not in writing. If 15 days pass and there is no resolution, the parties may be asked if they would like to work a little longer or file a formal written complaint. This decision is made based on the nature of the complaint and the parties involved. With some LEAs, it is clear that a formal written complaint is the best route to resolution or perhaps the actions taken by either party preclude an informal resolution (e.g., parents withdraw student from the school and unilaterally enroll him/her elsewhere). EAP has been in place for about four years, although the state has been doing this without a name for longer.

When a complaint is filed in Iowa, the complainant is contacted, usually by telephone, to inform the party that two other options are available for resolving the concerns: the *resolution facilitator process*, available through the AEA, or the *preappeal conference*, available through the SEA. Both options are designed to help the parties find common ground and devise a plan for implementation of a desired outcome that is acceptable to both parties. The agency named as allegedly committing a violation may also propose a corrective action plan (CAP) to address the allegations in the complaint. Iowa Department of Education may accept, reject or negotiate the proposed CAP or require other corrective actions or time lines to ensure compliance for each allegation stated in the complaint. If this process is not successful, the SEA will conduct a full complaint investigation.

A parent, LEA or AEA in Iowa may request a *preappeal conference* on any decision relating to identification, evaluation, educational placement or the provision of FAPE. This request must be in writing to the Iowa Department of Education and must include identification of the student and AEA, as well as a description of the issues or concerns. Participation is voluntary. The conference is convened at a mutually convenient time and place and conducted by a mediator in a fashion similar to mediation. The preappeal conference is intended to promote communication, mutual respect and identification of common ground. The desired outcome of the conference is a written agreement that is appropriate for the child's individual needs and is acceptable to all parties. If this outcome is not obtained, either party may request mediation, a due process hearing or a complaint investigation. Costs are paid for by the Iowa Department of Education.

As another option for early dispute resolution, Minnesota is looking into the use of *proactive restorative measures*. Such measures are designed to repair the harm caused by one person to another or to the community by restoring order. Schools may use simple restorative measures to improve communication with individuals or groups, or a detailed program with a community. Restorative measures may be used at the time of initial placement to address shock and feelings of an "unequal playing field." Discussions have been held with mediators, who would be most likely to use restorative measures, parent representatives and the state violence prevention expert who is a restorative expert. Minnesota stakeholders are excited about restorative measures being available before or after a complaint is filed or hearing requested.

Local or Regional Dispute Resolution

In Iowa, a *resolution facilitator* may be used at the discretion of the LEA or area education agency (AEA), as noted above, to help settle differences between parties. The facilitator is a trained mediator who presides over a meeting and helps the parties find common ground and

solutions at the local or regional level. If the meeting is successful, the parties devise and implement a plan. If the parties cannot agree on an appropriate course of action, the state-level preappeal process, complaint process (if a perceived violation has occurred) or hearing process can be used. Each AEA also has a *Parent-Educator Connection* program supported by the SEA in which a parent coordinator, who is also a parent of a child with a disability, may go to IEP meetings to facilitate problem solving and assist with communication. To facilitate local or regional dispute resolution, the SEA will pay for the Iowa Peace Institute to provide mediation training to any AEA on location. Introductory mediation (four days), advanced mediation (four days), advanced Part Two (two days) or refresher training is available. AEAs are encouraged to invite parents and other community members, as well as AEA employees, to the mediation training sessions. The interviewee noted that the formal resolution facilitation process is being used on a limited basis, but the people who have completed the Iowa Peace Institute training are being called into situations where potential conflicts may occur and are able to promote relationships and facilitate agreements at a very early stage.

Conciliation has been part of the Minnesota state law for more than 20 years and pre-dates federal mandates for dispute resolution. Developed by LEAs, it was a precursor to mediation and all other components of the state's dispute resolution system. If an agreement cannot be reached at the IEP team meeting regarding evaluation, placement or program changes, the LEA must offer conciliation to the parent(s) within 10 days. The parent(s) are free to accept or reject conciliation. The facilitator at conciliation is typically the LEA administrator who is one level higher than the administrative representative who attended the IEP meeting. The parties may, however, agree to use a neutral third party as the facilitator. Parents have the right to be represented by counsel or another person of their choosing at conciliation. Conciliation may be with the full IEP team or a smaller group. After the final conciliation conference, the LEA has seven days to send the parent a written memorandum of its proposed action following the conference. The SEA takes a "hands off" approach and the only time the SEA would get involved is if an LEA fails to offer conciliation and a complaint is filed.

In Maine, the *superintendent complaint* is available to parents who may file a written complaint with the superintendent of the LEA responsible for the education of the child(ren) in question. The superintendent, or a designee, then appoints a person to investigate the complaint and to recommend to the superintendent, within 30 days of the receipt of the written complaint, any corrective action necessary to resolve the complaint. Parents are not required to use this process before pursuing dispute resolution at the state level.

Early dispute resolution procedures have been implemented locally in California for at least 10 years, supported locally and through discretionary funds from the SEA. A range of informal strategies is used (e.g., facilitated IEPs, solutions panels, IEP coaches, resource parents and technical assistance/expert teams). All of these local strategies are intended to promote more effective problem solving at the IEP team and/or school level in order to resolve differences without the need for more formal, often confrontational resolution procedures. There is an annual conference for LEAs to provide information about and support for these early dispute resolution options.

As a result of the *Lee v. Macon* consent decree in Alabama, the state provides training to LEAs on resolving disputes between schools and parents, and the SEA supports peer mediation training for students and staff. Workshops on dispute resolution are also provided across the state in Virginia for a number of audiences, including parents, school personnel, service providers, attorneys and other consumers.

Although no specifics were provided, local dispute resolution is encouraged in Washington and Wyoming.

Facilitated IEP Meeting

In Minnesota, a *facilitated IEP meeting* may be requested by either party at any time, as well as ordered as a result of a formal complaint or by a hearing officer. The parties may be directed to a facilitated IEP meeting if a complaint decision is issued and there is still need for assistance with communication issues. This dispute resolution option involves convening the full IEP team with a neutral mediator present to facilitate communication. The facilitator does not comment on content or compliance issues. The SEA pays the cost of the facilitator who is from the trained mediator pool. The facilitated IEP meeting concept grew out of the mediation system. Facilitated IEP meetings in California are conducted and supported at the local level. As in Minnesota, a facilitated IEP meeting may be requested by either party at any time in order to resolve differences between school personnel and parents.

Pre-Hearing Options

When a due process hearing is requested in Massachusetts, the parties are automatically offered an *advisory opinion process*. If both parties agree to this option, documents are submitted prior to a two-hour meeting with a hearing officer. Each party has exactly 45 minutes to give an oral description of the issues, during which time only the hearing officer can ask questions. The meeting concludes with 15 minutes for each party to ask questions. The hearing officer renders a non-binding opinion that is a maximum of one page in length. At that point, the parties decide whether to move forward with the due process hearing. If the case goes on to a full hearing, the advisory opinion is not shared with the next hearing officer. Massachusetts also has a *pre-hearing conference process*, scheduled subsequent to a hearing request, which is an informal opportunity for the parties to get together with the hearing officers to discuss the issues and possibility of resolution.

At the time information was gathered for this document, Minnesota was obtaining input from a 13-member stakeholder group on *binding arbitration*. This option would have a specific set of standards that distinguishes it from a due process hearing, including: no attorneys; pre-set period of time in which to complete the arbitration; equal and pre-set amount of time for each party to present its case and rebut; and issuance of a decision, but no prevailing party. In contrast to Massachusetts' advisory opinion process, the arbitrator's decision would be binding and parties would waive their right to take the same issue to a due process hearing.

Washington is piloting the option of a *due process settlement conference* prior to a formal hearing. An administrative law judge conducts this conference, but not the judge assigned to the

due process hearing. The goal is to facilitate communication and settle the dispute in an expedited fashion. In preparation for this pilot, the judges participated in mediation training.

Informing Parents and the Public about Dispute Resolution Options

States advise parents about resources such as the federally-funded Parent Training and Information Centers (PTIs) or similar groups that can help them through the dispute resolution process. Some states provide workshops specifically designed for parents on conflict resolution and/or other training activities for those who provide assistance to parents (e.g., social workers and advocates). These activities are also regarded as resources for preventing problems and building bridges between parents and schools to avoid the development of conflicts that can escalate and require formal dispute resolution activities.

In all ten states, the public is informed about available dispute resolution options using a variety of methods. All states in the study post information on the websites of their education agencies. Examples of web-based information include an overview of the state's dispute resolution system, descriptions of various options, guidelines as to when to select one option over another, state dispute resolution manuals, lists of hearing officers and/or mediators and their qualifications and sanitized/redacted hearing decisions. At least six of the ten states have forms available for downloading on their websites (e.g., forms for filing a complaint, requesting mediation, etc.).

States also disseminate information about dispute resolution options through protection and advocacy groups, parent training and information centers and local districts using brochures, pamphlets, handbooks, videos and flyers. Procedural rights/parents' rights brochures may also include information about dispute resolution options. Several interviewees mentioned that presentations on dispute resolution options are made around their states. At least one of the states has a toll-free number where families can get information about dispute resolution options.

Changes Under Consideration and Recommendations from States

Three of the ten states made recommendations or are considering changes to their complaint systems. One interviewee questioned the value of the formal complaint procedure and recommended its elimination. Illinois is considering requiring that the LEA first address all complaints. The state complaint system would handle only those complaints that were not resolved by the LEA. Wyoming, a state that currently uses SEA staff to investigate complaints, is considering changing to consultants to reduce conflicts of interest.

Several changes are under consideration for state due process procedures. Minnesota is considering changing to a one-tier due process system and eliminating the option parties currently have to reject one hearing officer. The purpose of these changes would be to streamline the due process system. Washington is considering adding a *due process settlement conference* prior to a hearing, conducted by a judge who is not assigned to the due process hearing. (See information about pre-hearing options above.)

In Maine, as a response to the on-going State Improvement Grant process, several changes to the due process database are being implemented to facilitate tracking of due process information for reporting purposes. Washington is also planning changes to its mediation database.

As mentioned previously, three states in the sample are in the process of implementing the CADRE/NASDSE database (Alabama, Iowa and Maine) and two others (California and Virginia) expressed interest in the database. This reflects a state need to have more and better data available for evaluation and program improvement purposes.

One state expressed interest in more information on early and less formal dispute resolution strategies and an interviewee from another state recommended that language be added to the IDEA that would encourage such strategies. Other needs mentioned by interviewees include: how to write better mediation agreements and enhance the human relations skills necessary for dispute resolution.

Concluding Remarks

Although states are required by federal law to have at least three components to their special education dispute resolution systems—complaints, mediation and due process hearings—there is variation among states as to how the components are administered and staffed. Dispute resolution procedures and processes also vary, and some states are using one or more early dispute approaches in addition to the three required components.

This analysis indicates that the main dispute resolution components—complaints, mediation and due process—typically do not function as an integrated system. For example, the managers or administrators of one component may not know the most commonly disputed issues in another component and it is often impossible to know if the party who files a complaint has a due process hearing on the same issue at a later date. There is no legal requirement for such an integrated system and some interviewees from this study provided a rationale for separation of the components. However, with the growing emphasis on using data for program improvement and examining dispute resolution during the monitoring process, there is increasing interest and need for integrated dispute resolution data. In order to meet this need, the components will have to be more systemically interrelated than appears to be the case in most states.

Several other factors have spurred interest in data on state dispute resolution systems. Concern about the cost of special education litigation—both human and monetary—led to changes in the IDEA at the time of the 1997 reauthorization. As noted previously, states are now required to offer mediation at the time of a due process hearing request. As a result, there is increased availability of mediation and other early dispute resolution options, some of which are described in this document. Higher costs and more options have fueled interest in dispute resolution data that allow administrators and policymakers to determine if disputes are being resolved at the earliest and most informal levels. A greater understanding of how a state's dispute resolution system fits together also helps to answer this question.

References

Ahearn, E. (1994). *Mediation and due process procedures in special education: An analysis of state policies*. Alexandria, VA: Project FORUM, National Association of State Directors of Special Education.

Ahearn, E. (2002). *Due process hearings: 2001 update*. Alexandria, VA: Project FORUM, National Association of State Directors of Special Education.

Ballard, J., Ramirez, B., & Weintraub, F. (Eds.). (1982). *Special education in America: Its legal and governmental foundations*. Reston, VA: Council for Exceptional Children.

Imobersteg, G. (2000). *Evaluation study of special education dispute resolution issues in California: Final report*. Kauai, HI: Special Education Law Associates.

Schrag, J. (1996). *Mediation and other alternative dispute resolution procedures in special education*. Alexandria, VA: Project FORUM, National Association of State Directors of Special Education.

Schrag, H., & Schrag, J. (2000). *Dispute resolution database structure and elements*. Retrieved February 10, 2003 from http://www.directionservice.org/cadre/drdata.cfm.

U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)

NOTICE

Reproduction Basis

[ ] This document is covered by a signed "Reproduction Release (Blanket)" form (on file within the ERIC system), encompassing all or classes of documents from its source organization and, therefore, does not require a "Specific Document" Release form.

[X] This document is Federally-funded, or carries its own permission to reproduce, or is otherwise in the public domain and, therefore, may be reproduced by ERIC without a signed Reproduction Release form (either "Specific Document" or "Blanket").